IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3031 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKHSAFIK SHAIKHAJIJ SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3031 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RC KODEKAR ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2003

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta appearing on behalf of the petitioner and learned AGP Mr.R.C.Kodekar for respondents State.

Rule, in the present petition, issued on 20th February, 2003 making it returnable after a period of six weeks.

#. By way of this petition, the petitioner has challenged the order of detention dated 14th January, 2003 passed by the Commissioner of Police, Surat City which came to be executed on the petitioner on 30th January, 2003 under Section 3[1] of the PASA Act. Pursuant to the impugned detention order, the detenu has been detained in Porbandar District Jail as Class-II detenu.

#. Looking to the grounds of detention passed against the present petitioner, in all, four offences have been registered against the present petition and also two unregistered offence have also been disclosed by the secret witnesses against the present petitioner. The statements of the secret witnesses have been recorded on 25th December, 2002 which came to be verified by the sponsoring authority on 13th January, 2003 and 30th December, 2002 respectively and finally verified on 13th January, 2003 by the detaining authority. The affidavit of the State Government has been filed which is taken on record and a copy thereof has been served on the petitioner. As such, no affidavit is filed on behalf of the detaining authority.

#. Learned advocate Ms.Banna Datta for the petitioner has raised various contentions to challenge the order of detention but according to her, one contention is enough to vitiate the order of detention which is covered by the decision of this Court. Therefore, she submitted that on 13th January, 2003, statements of the secret witnesses have been verified by the detaining authority and very next day, the detention order has been passed without testing the credibility of the witnesses and the genuineness of the contents of the statements given by the secret witnesses. Therefore, she relied on the decision of this Court in case of Gopal Ramchandra Shahu v. State of Gujarat in Special Civil Application No.1692 of 1999 dated 7th July, 1999 and also placed reliance on the decision reported in 2000[3] GLR 2696.

#. Learned AGP Mr.R.C.Kodekar for the respondent State authority has submitted that the detaining authority has rightly appreciated the materials while coming to the subjective satisfaction and passed the detention order which is legal and valid. He also submitted that the detaining authority having entire material placed by the

sponsoring authority before the detaining authority and thereafter arrived at subjective satisfaction for passing the detention order and with full application of mind, the detention order has been passed. The detaining authority has also examined genuineness of fear which has been expressed by the secret witnesses and rightly claimed privilege under Section 9[2] of the PASA Act. Therefore, it is case of the respondent that the detaining authority has rightly passed the detention order which is legal and valid and no interference is required by this Court under Article 226 of the Constitution.

#. I have considered submissions made by the learned advocates for the parties. The contention which has been raised by the learned advocate Ms.Banna Datta is squarely covered by two decisions, viz, the decision reported in 2000[3] GLR 2696 and the second decision of this Court rendered in SCA No.1692 / 1999 dated 7th July, 1999. The contention and the question involved in the present petition has been examined by this Court that on 13th January, 2002 the statements of the secret witnesses came to be verified and on very next day, the order of detention came to be passed against the present petitioner. Such hurriedly action in passing the order of detention, has been considered to be a mechanical manner for passing the order of detention and the same being arbitrary one, the impugned order of detention is quashed and set aside by this Court. In the aforesaid decisions, it was also examined by this Court that narration by the secret witnesses disclosing unregistered offence, require to be examined by the detaining authority at the time of verification of the statements. Therefore, the detaining authority shall have to examine whether the incidents narrated by the secret witnesses, have in fact, taken place or not. But this aspect has not been considered by the detaining authority and on the contrary claimed privilege under Section 9[2] of the PASA Act. Therefore, it is the duty of the detaining authority to arrive at subjective satisfaction on the basis of the material which has been placed by the sponsoring authority. The view taken by this Court and relevant observations made in above referred decision in Special Civil Application No.1692 / 1999 dated 7th July, 1999 are quoted as under :

" It is true that both the offences have been registered against the petitioner for violation of the prohibition law, however, nothing on record suggests that at the time of the raid, anything happened that would amount to

> breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the petitioner has been indulging into anti social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the detaining authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the detaining authority or any other officer would not be sufficient. Besides, the detaining authority has not made any counter affidavit to show whether such exercise had been undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The detaining authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order."

#. In this case, the detaining authority has not examined the credibility of the witnesses whose statements were recorded by the authority concerned. In the aforesaid decision, this court has observed that mere formal verification made by the detaining authority or any other officer would not be sufficient to pass the impugned order of detention. Therefore, considering the law laid down by this court in the aforesaid decisions in light of the facts of the present case, according to my opinion, detaining authority has not applied his mind in respect of the credibility of the witnesses as well as whether the incident is real one or not and this has vitiated the subjective satisfaction of the detaining

authority and, therefore, impugned order of detention is required to be quashed and set aside.

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In view of the above observations and discussion, the petition succeed and the same is allowed. The impugned order of detention dated 14-1-2003 passed by the Commissioner of Police, Surat City, which executed on the petitioner on 30th January, 2003 is hereby quashed and set aside. The detenu - SHAIKHSAFIK SHAIKHAJIJ SHAIKH detained at Porbandar District Jail, Porbandar be set at liberty if he is not required in any other case.

Rule is made absolute accordingly with no order as to costs.

Direct Service is Permitted.

Dt.13.6.2003 [H.K.Rathod, J.]

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